

DATE: May 19, 1998

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 97-0314

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

Peregrine D. Russell-Hunter, Chief Department Counsel

FOR APPLICANT

Pro Se

Administrative Judge Richard A. Cefola issued a decision, dated February 3, 1998, in which he concluded it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant. Applicant appealed. For the reasons set forth below, the Board affirms the Administrative Judge's decision.

The Board has jurisdiction on appeal under Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992 as amended.

Applicant's appeal presents the issue of whether the Administrative Judge's adverse security clearance decision is arbitrary, capricious, or contrary to law.

Procedural History

The Defense Office of Hearings and Appeals issued a Statement of Reasons (SOR) dated May 2, 1997 to Applicant. The SOR was based on Criterion G (Alcohol Consumption).

Applicant submitted an answer to the SOR wherein he requested that DOHA make a decision in his case without a hearing. In response, DOHA Department Counsel prepared a File of Relevant Material (FORM) and submitted it on July 21, 1997. Although Applicant was informed of his right to submit a reply to the FORM, including any documents he wished to have considered, he did not respond to the FORM. The Administrative Judge subsequently issued a written decision in which he concluded it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant. The case is before the Board on Applicant's appeal from that unfavorable decision.

Appeal Issue

The Administrative Judge found that Applicant had two convictions for driving while intoxicated in 1996. He also found that Applicant consumed alcohol at times to excess and to the point of intoxication from about 1982 until 1988 and then again from 1991 until he last consumed alcohol in November 1996. The Judge concluded this pattern of behavior raised security concerns. He ultimately concluded that Applicant had not rebutted the Government's case against Applicant regarding alcohol consumption.

Applicant makes the following arguments on appeal: (1) his legal problems off-duty have not affected the country's security; and (2) he has always performed above and beyond the call of duty, both as a military member and as a civilian. The Board construes these arguments as raising the issue of whether the Administrative Judge's decision is arbitrary, capricious or contrary to law.

Applicant's first argument is not persuasive. The fact that his alcohol consumption has not resulted in the compromise of classified information does nothing to lessen the security significance of the conduct. The federal government must be able to place a high degree of trust and confidence in persons granted access to classified information. Moreover, it need not wait until a security violation has occurred before it can deny or revoke an applicant's access to classified information. *Adams v. Laird*, 420 F.2d 230, 238-9 (D.C. Cir. 1969), *cert. denied*, 397 U.S. 1039 (1970). All that is required is proof of facts and circumstances that indicate an applicant is at risk for mishandling classified information, or does not demonstrate the high degree of judgment, reliability or trustworthiness required of persons granted access to classified information. The Administrative Judge's findings and conclusions about Applicant's overuse of alcohol provide a rational basis for the Judge to question Applicant's judgment and reliability and conclude that Applicant should not be granted access to classified information.

Applicant's second argument involves his career achievements. It is based entirely upon documents attached to Applicant's appeal brief that were not part of the record below and includes some factual assertions that go beyond the record evidence. The Board cannot consider new evidence on appeal. Directive, Additional Procedural Guidance, Item 29. Accordingly, the Board must disregard those documents and factual assertions that constitute new evidence, and declines to address Applicant's second argument to the extent it is based on such new evidence.

Applicant's second appeal argument also can be construed as raising the issue of his loyalty. Industrial security clearance decisions are not loyalty determinations. *See* Executive Order 10865, Section 7. Nothing in the Administrative Judge's decision indicates or suggests the Judge was basing his decision on any finding about Applicant's loyalty. Rather, the Judge based his decision on his findings and conclusions about Applicant's history of episodic alcohol abuse.

Conclusion

Applicant has failed to meet his burden on appeal of demonstrating error below. Accordingly, the Board affirms the Administrative Judge's February 3, 1998 decision.

Signed: Emilio Jaksetic

Emilio Jaksetic

Administrative Judge

Chairman, Appeal Board

Signed: Michael Y. Ra'anan

Michael Y. Ra'anan

Administrative Judge

Member, Appeal Board

Signed: Jeffrey D. Billett

Jeffrey D. Billett

Administrative Judge

Member, Appeal Board

